FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

THIS IS THE BEGINNING OF MUR # 3385

DATE FILMED 7/26/93 CAMERA NO. 4

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AR-91-37

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MJ000354

October 17, 1991

MEMORANDUM

MUR 3385

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: BUSH-QUAYLE 88 REFERRALS

On August 27, 1991, this office referred a matter resulting from the audit of the Bush-Quayle 88 committee to your office. The issue involved the billing of members of the Press for travel on campaign chartered aircraft.

Subsequently, on October 3, 1991, the Commission altered the position taken when the referral was made. The change relates to the billing of travel, subsistence, and salary for Committee personnel assigned to the Press travel program. As explained in the referral, the staff concluded that these costs were administrative in nature rather than part of direct cost. The Commission, during the consideration of the final audit report, revised the previous determination and agreed with the Committee's position that these expenses could be considered part of the direct cost of providing transportation and services to the Press.

The Audit staff has recalculated the amounts owed to the Press as a result of the Commission's decision and the revised finding is attached for your consideration (Attachment 1).

During the revision of the press plane finding, a previously unidentified but related issue was noted. The issue relates to the billing of the Secret Service for their agents' travel on the campaign charters. It appears that by understating the number of passengers on the aircraft used by Vice President Quayle, the Committee overcharged the Secret Service for its travel. Though this matter has no effect on the Committee's compliance with the

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spending limitations, has no repayment implication, and does not appear to violate the FECA or Commission regulations, it is presented for your consideration.

According to a Secret Service policy document for the 1988 campaign season, when the Secret Service traveled on a campaign's chartered aircraft, the campaign was to be reimbursed an amount equal to the lesser of first class air fare, or the pro rata share of the cost of the charter for each Secret Service agent on the aircraft. In both the policy statement and Comptroller General decision B-130961.141, the pro rata cost is defined as "the cost of the chartered flight divided by the number of seats occupied." Both documents are at Attachment 2.

Further, the policy statement requests that billings submitted include the following:

1. Date of flight
2. Departure and arrival points
3. Total cost of charter
4. Total number of seats occupied
5. Total number of seats occupied by Secret Service personnel
6. Amount due from the U.S. Secret Service

Finally, the campaign is requested to provide a certification on each billing that the billing is correct and that no previous payment had been received for that flight.

For the Quayle charter, the Secret Service billings appear to have been done incorrectly. It is noted that the flight manifests for the Quayle charter were formatted differently than the Bush manifests and may have contributed to the miscalculation. The Quayle manifest format showed a total number of passengers for Press billing purposes and showed the number of Secret Service agents as a separate entry lower on the page. The total passengers for Press billing purposes must be added to the number of Secret Service on board in order to arrive at the total number of seats occupied. This final addition appears not to have occurred during the preparation of the Secret Service billings. The result was to understate the number of seats occupied, which in turn overstated the per seat cost. This overstated cost was compared to first class air fare by the Secret Service and the lesser of the two was paid.

In many cases, the overstated seat cost was less than first class air fare due to the relatively large number of passengers on the flight and was therefore paid by the Secret Service.

Attachment 3 contains an example of a manifest and the associated Secret Service billing. The billable amounts for this example are presented below:

| | Committee Calculation | Audit Calculation |
|---|---|---|
| Cost of Charter | $25,859.00 | $25,859.00 |
| Total Number of Seats Occupied | 40 | 55 |
| Cost Per Occupied Seat | 647.00 | 470.00 |
| First Class Air fare as Calculated by the Secret Service1/ | 664.00 | 664.00 |
| Number of Secret Service Personnel Per Billing | 15 | 15 |
| Reimbursable Amount | $ 9,705.00 | $ 7,050.00 |

Therefore, the Secret Service was overbilled and overpaid by $2,655.00.

In the Committee's accounting system, receipts from the Secret Service are coded separately for the Candidates' spouses' charters than those for President Bush and Vice President Quayle. In-house records for Mrs. Bush's charter are not sufficient to make a complete analysis. However, the records available indicate that in most cases, the number of Secret Service agents aboard that charter was small and that the total seats occupied was also limited. As a result, the pro rata charge was high and in most cases greater than first class. Therefore, the Secret Service paid first class air fare. Given the above, it would appear unlikely that a material amount of overbilling occurred with respect to Mrs. Bush's aircraft.

The Press Plane that accompanied Air Force II would not appear to account for a significant part of the overbilling. Generally, the difference between the Committee's per seat cost and the amount billed to the Secret Service is small. Further, that aircraft generally carried only two Secret Service. The Secret Service billings are available for the majority of these flights and reflect only $4,329.82 in overbilling.

Though the Bush Press Plane does not appear to account for a material portion of the overbilling, it is included in the recalculation discussed below since the receipts from the Secret Service for the Bush and Quayle charters are not separated in the Committee's computer system. Therefore, the two charters can not be analyzed individually.

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1/ The copies of the Secret Service bills available are annotated by the Secret Service with their calculation of first class air fare.

Using the available records for the Bush and Quayle charters, it appears that the Committee received at least $98,197.17 in excess of what would have been paid had the Secret Service been provided the correct information. Further, this amount is $60,590.83 in excess of the Committee's per seat cost of the Bush and Quayle charters.

It would further appear, based on the limited records available, that less than per seat cost was recovered for Mrs. Bush's charter.

This matter is presented for your consideration and possible inclusion in the compliance matter generated from the attached referral. In that the matter was not raised earlier, it would appear inappropriate to raise it in the context of the final audit report. Addenda are generally limited to matters of repayment under the FECA. As stated above, this issue has no repayment ramifications. In the compliance track, the Committee could be requested to comment on the matter and take appropriate action. In the alternative, the issue could be brought to the attention of the Secret Service for whatever action that agency deems appropriate. Again, this could be done in the compliance context.

Should you have any questions, please contact Joe Stoltz or Marty Favin at 219-3720.

Attachments:

Attachment 1 - Press Plane
Attachment 2 - Campaign Committee Aircraft Charter Billing Procedures
Attachment 3 - Billing Example

cc: Commissioners

## 1. Press Plane

Sections 9004.6(a) and (b) of Title 11 of the Code of Federal Regulations state, in part, that if an authorized committee incurs expenditures for transportation, ground services and facilities made available to media personnel, such expenditures will be considered qualified campaign expenses subject to the overall expenditure limitation at 11 C.F.R. §9003.2(a)(1) and (b)(1). Further, if reimbursement for such expenditures is received by a committee, the amount shall not exceed either: the individual's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the individual's pro rata share of the actual cost of the transportation and services made available. An individual's pro rata share shall be calculated by dividing the total number of individuals to whom such transportation and services are made available into the total cost of the transportation and services. The total amount of reimbursements received from an individual shall not exceed the actual pro rata cost of the transportation and services made available to that person by more than 10%.

Section 9004.6(d)(1) of Title 11 of the Code of Federal Regulations states, in part, that the committee may deduct from the amount of expenditures subject to the overall expenditure limitation at 11 C.F.R. §9003.2(a)(1) and (b)(1), the amount of reimbursements received for the actual cost of transportation and services provided under paragraph (a) of this section. The committee may also deduct from the overall expenditure limitation an additional amount of reimbursement received equal to 3% of the actual cost of transportation and services provided under this section as the administrative cost to the committee of providing such services to media personnel and seeking reimbursement for them. If the committee has incurred higher administrative costs in providing these services, the committee must document the total cost incurred for such services in order to deduct a higher amount of reimbursements from the overall expenditure limitation. Amounts reimbursed that exceed the amount actually paid by the committee for transportation and services provided under paragraph (a) of this section plus the amount of administrative costs permitted by this section shall be repaid to the Treasury.

Also, the Explanation and Justification for the above regulations (Federal Register, Volume 52, No. 106, Page 20866) states, that "committees may deduct an additional 3% of the direct cost of providing services to the Media if reimbursements in that amount are received. The additional 3% is intended to cover the administrative cost to the campaign of making media travel arrangements, tracking which media personnel are accompanying the candidate on each leg of the campaign, and billing the media organizations for their share of the expenses. These administrative costs are not part of the direct cost of providing media transportation and services and may not be included in the calculation of direct costs for billing purposes, whether the committee uses its own staff to perform these tasks or hires a travel consultant and collection agency." Further, when discussing the 3% administrative cost allowance, the Explanation and Justification states that the new provision would continue to limit the amount billed to 110% of the direct cost of services. It does not increase the amount a campaign may bill for providing services. It only increases the size of the offset if reimbursements exceed 100% of direct cost to the campaign.

Beginning in August 1988 through November 9, 1988, the GEC provided a plane for members of the Press to accompany Air Force II. In addition to media personnel this aircraft generally carried two Secret Service agents, four GEC staff assigned to the Press travel program and on some occasions a small number of other GEC staff. Also, a separate aircraft was used by Vice President Quayle and his traveling party. This aircraft generally carried Vice President Quayle, GEC staff (usually including four persons assigned to the Press travel program), media personnel and a number of Secret Service agents.

The GEC determined the cost of each leg of each trip and then billed members of the Press for air transportation. In a separate calculation the GEC billed the Press for ground transportation and services.

When preparing the billings for air transportation the GEC made the following calculations. For GEC staff, other than those assigned to the Press travel program, the cost of the flight was divided by the number of persons on the flight to determine a pro rata cost. This cost was then multiplied by the number of GEC passengers on the flight, again excluding the staff assigned to the Press travel program, to determine the GEC share of the aircraft cost. The remainder of the aircraft cost was divided by the number of Press on the flight to determine the amount to be billed to the Press. As a result, both the cost attributable to the GEC staff assigned to the Press travel program and the Secret Service was billed to the Press. Even though the cost of providing air transportation to the Secret Service was billed to the Press as described above, the Secret Service was also billed.

The Audit staff reviewed documentation for each leg of each trip to determine the billable amount for the Press. The pro rata cost was determined by dividing the cost of each flight by the number of passengers on the flight. This amount was multiplied by the number of Press on the flight and then accumulated for all flights. The accumulated amount was then multiplied by 110%, resulting in a billable amount for Press air transportation of $2,852,818.30. The GEC billed the Press a total of $3,117,905.00 for air transportation.

The GEC also billed the Press for local ground costs on various trips. As a line item on these bills the GEC included "Daily Staff Expenses." Though no records were located to allow the Audit staff to calculate the costs covered by this item, it appears to be the expenses of the GEC personnel that traveled with the Press. The total amount billed to the Press for Daily Staff Expenses during the campaign was $20,211.

In addition, the Press was billed for the total cost of telephone filing centers. The GEC did not take into account the refunds of $7,974.86 they received from the telephone companies.

The Audit staff determined that if the GEC had billed the Press 110% of the cost for air fare, local bus transportation and other ground services, total billings would have been $3,177,130.35. The GEC billed the Press $3,440,920.00 and received reimbursements of $3,536,029.63. For purposes of this analysis, neither the correct billable amount for the Secret Service, nor the amount received by the GEC from the Secret Service is included.

As a result of the billing practice described above, the Audit staff concluded in the Interim Audit Report that the GEC has received $358,899.28 ($3,536,029.63 - $3,177,130.35) in excess of the maximum billable amount (which is 110% of actual cost).

Since all amounts received from the Press were reported as offsets to operating expenditures and expenditures subject to the spending limitation, the Interim Audit Report further stated that the GEC's reported total for expenditures subject to the spending limitation was understated by $358,899.28 due to this practice. This amount was added to the GEC expenditures subject to the limitation. Also, the Audit staff included the $358,899.28 on the Statement of Net Outstanding Qualified Campaign Expenses (NOQCE) as a payable to the various Press organizations the GEC over billed during the campaign.

Though the GEC is permitted to receive from the Press an amount equal to 110% of the actual cost of transportation services provided, only an amount equal to 103% of the actual costs may be offset against the spending limitation absent a showing of administrative costs in excess of three percent.

In the Interim Audit Report, a total amount of $202,181.02 was noted as the GEC's receipts in excess of 103%, but less than 110%, of GEC's cost of providing transportation and other services to the Press. This amount was repayable to the U.S. Treasury, unless the GEC was able to document administrative costs equal to 10% of the direct cost of providing transportation and services to the Press. This amount was also included with the GEC's expenditures subject to the spending limitation since the receipts from the Press were treated as offsets to such expenditures.

A schedule detailing the above calculations was provided to the GEC at the exit conference.

In the Interim Audit Report the Audit staff recommended that the GEC provide documentation showing that they have not over billed the Press by $358,899.28 and that they should submit documentation to demonstrate that the $202,181.02 in receipts from the Press are not in excess of costs incurred to provide transportation and services to the Press.

It was further recommended that in the absence of such documentation, the GEC should submit evidence that $358,899.28 had been refunded to the Press. This evidence was to include the calculation of the amount paid to each Press organization and copies of the front and back of the negotiated refund checks.

In response to the Interim Audit Report, the Treasurer states that "... at no time did Bush-Quayle bill the Press more than 100% of the cost of the services provided to the Press despite the fact that it legally could have billed for up to 110% of the cost." The Treasurer states that:

> [t]he issue with regard to the Press Plane revolves solely around the fact that the pro rata press travel expenses included the travel expenses of four campaign individuals who travelled: 1) at the request of the press; 2) with the explicit understanding that they would be paid for by the press; and 3) to provide certain services requested by the press, which, had the press not requested these services, would not have been provided. Thus, these individuals would not have been on the press plane were it not for the request of the press.

The GEC provided five affidavits, including one from a member of the Press who traveled on the Press plane, which supports the above stated points made by the GEC (see Attachment 1). The other four affidavits were from GEC staff and outlined their duties as follows: "... to organize arrangements for ground and air transportation, respond to special requests of the press (such as additional press seats), arrange for proper and acceptable food and supplies of beverages requested by the press, and provide additional information regarding the schedule, all in addition to creating and maintaining passenger manifests and credit cards payment facilities for the press."

The Treasurer takes exception to the Audit staff's treatment of these individuals as "passengers" on the Press plane. He contends that "these individuals were not 'passengers' any more than the pilot or navigator were passengers" and that they were on the plane for the purpose of facilitating travel by the Press and their costs were borne by the Press with the full concurrence of the Press. He adds that "... the Commission's own regulations acknowledge that there is no distinction between the Committee's staffers and independent contractors for the purposes of determining cost," (11 C.F.R.§9004.6(d)(2)) and that "... this issue would never have arisen had the Committee contracted with the air carrier for it to provide these services to the press using airline employees (as commercial airlines do for most of these services as a matter of course)." The Treasurer concludes that the GEC does not owe the Press $358,899.28 in reimbursements because "... the press was charged the exact costs of travel on the press plane, nothing more, nothing less."

The Audit staff disagrees with the GEC's contention that this issue never would have been raised if the GEC had contracted directly with the air carrier to provide services to the Press using airline employees. As the Treasurer notes, Commission regulations make no distinction between having campaign personnel or third party personnel perform these services. The Audit staff concluded that in neither case can the costs be included in the direct costs for purposes of billing persons traveling with the campaign.

The Treasurer's argument that the GEC staff who administered the Press travel program should not be considered as "passengers" is not relevant. The regulations at 11 C.F.R. § 9004.6 specify that an individual's pro rata cost shall be determined by dividing the total number of individuals to whom such transportation was made available into the total cost of the transportation. All GEC staff are covered by the term "individual" regardless of their duties.

The Audit staff does not dispute that the GEC staff persons travelled at the request of the Press, nor does the Audit staff dispute the Treasurer's statement that these campaign staff persons were on the plane for the purpose of facilitating travel for the Press. The Audit staff concluded that these facts did not establish that costs associated with these staff persons' travel were direct costs for providing transportation and services to the Press.

The proposed Final Audit Report stated that it was the opinion of the Audit staff that the services provided by the GEC staff were administrative costs as defined in the Explanation and Justification (Federal Register, Volume 52, No. 106 Page 20866) for 11 C.F.R. §§ 9004.6(a) and (b) and 9004.6(d)(1). The Audit staff concurred with the Treasurer's reference to 11 C.F.R. §9004.6(d)(2) which states that administrative costs shall include all costs incurred by the committee for making travel arrangements for media personnel and for seeking reimbursements, whether performed by committee staff or independent contractors.

The Committee provided affidavits from four GEC staff members assigned to the Press travel program which documented their duties (See Attachment 1). Based on the Audit staff's review of the affidavits, the proposed Final Audit Report concluded that their duties had been administrative in nature. These staff person's duties, their salary, transportation and subsistence costs were calculated and compared to 10% of the total direct cost of providing transportation and services to the Press. This analysis indicated that the GEC had incurred administrative expenses in excess of 10% of the direct costs of the transportation and services provided. Therefore, no repayment to the U.S. Treasury was recommended.

The Final Audit Report concluded that the GEC received $358,899.28 in excess of the maximum billable amount from the Press (110% of actual cost). This amount was included in the GEC expenditures subject to the spending limitation (Finding II.B.3.) and on the NOQCE Statement as a payable to the various Press organizations which the GEC over billed during the campaign (Finding III.B.).

On October 3, 1991, the Commission determined that the services provided by the GEC staff who administered the Press travel program could be considered the direct costs of the transportation and services provided to the Press.

The Audit staff made revisions to the above calculations for air travel and services provided to the Press based on the Commissions determination.

The results of these revisions are addressed separately for each aircraft.

a. George Bush Press Plane

The Audit staff determined that the billable cost for air transportation and services for the Press was $2,167,245.51. Expenses incurred by the GEC staff who administered the Press travel program, for travel, salary and subsistence included in this amount totaled $172,705.81. This billable cost was then multiplied by 110%, resulting in the maximum billable amount of $2,383,970.06. The GEC received from the Press a total of $2,255,178.73 for transportation and services. Since this amount is less than the maximum amount that the GEC could have billed the Press for air transportation and other services, no refund is due the Press.

Though the GEC is permitted to receive from the Press an amount equal to 110% of the actual cost of transportation services provided, only an amount equal to 103% of the actual costs may be offset against the spending limitation.1/ Any amount received that is greater than the direct plus administrative cost but less than the maximum billable cost is repayable to the U.S. Treasury. Further, this amount is included in the GEC expenditures subject to the spending limitation since the reimbursements from the Press were treated as offsets to such expenditures. The amount in excess of the 103% is $22,915.85.

b. Dan Quayle Charter

A similar analysis was done to determine the maximum amount the GEC could bill the Press for air transportation and services for the Quayle Charter. The Audit staff determined that the billable cost was $1,042,756.61. This amount included expenses for travel, salaries and subsistence of the GEC staff who administered the Press travel program which totaled $148,995.99. The $1,042,756.61 was multiplied by 110% resulting in a maximum billable amount of $1,147,032.27 for air transportation and services to the Press.

The GEC received reimbursements from the Press of $1,280,850.90 which is $133,818.63 in excess of the maximum billable amount ($1,280,850.90 - 1,147,032.27). The $133,818.63 has been added to the GEC expenditures subject to the spending limitation (Finding II.B.3.) and has been included on the NOQCE Statement as a payable to the various Press organizations the GEC over billed during the campaign (Finding III.B.).

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1/ If the GEC incurred administrative costs in excess of 3%, they may document the larger amount and adjustments will be made.

As noted above, the GEC is permitted to receive from the Press an amount equal to 110% of the actual cost of transportation services provided, however, only an amount equal to 103% of the actual costs may be offset against the spending limitation.2/ The GEC has received payments from the Press totaling $72,992.96 in excess of 103% but less than 110%, of GEC's cost of providing transportation and other services to the Press. This amount is repayable to the U.S. Treasury and has been included in the GEC's expenditures subject to the spending limitation since the receipts from the Press were treated as offsets to such expenditures.

c. Recap

In summary, the GEC has received $133,818.63 in excess of the maximum billable amount from the Press (110% of actual cost). In addition, amounts which represent the receipts in excess of 103%, but less than 110% of the GEC's cost of providing transportation and other services to the Press, is repayable to the U.S. Treasury. This totals $95,908.81 ($72,992.96 + $22,915.85). Both amounts have been included in the GEC expenditures subject to the spending limitation (Finding II.B.3.) and included on the NOQCE Statement as a payable to the Press organizations (Finding III.B.).

A schedule detailing the above calculations is provided at Attachment 2.

Finally, the GEC's disclosure reports contain credits due various Press organizations totaling $106,012.67. Records provided to the Audit staff indicate that $61,557.67 of this amount relate to prepayments received by the GEC that have not been applied to any billing. Therefore, these prepayments should be refunded and the amount has been included as a payable on the NOQCE Statement (Finding III.B.) and since the receipts were considered offsets to operating expenditures, the $61,557.67 has also been added to the GEC expenditures subject to the spending limitation (Finding II.B.3.).

Recommendation #3

The Audit staff recommends that the GEC refund to the Press organizations $61,557.67 in unused prepayments and $133,818.63 in amounts received in excess of the maximum billable amount for Press travel on the Quayle Charter. The GEC should submit evidence of these refunds, including the resolution of all credits, the calculation of the amount paid to each Press

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2/ If the GEC incurred administrative costs in excess of 3%, they may document the larger amount and adjustments will be made.

organization and photocopies of the front and back of the negotiated refund checks. See Finding III.A. for an explanation of the $95,908.81 repayment related to collections in excess of 103% of billable cost.

## Campaign Committee Aircraft Charter Billing Procedures

The purpose of this paper is to inform Presidential Campaign Committees of the procedures for billing the U.S. Secret Service for the cost of space occupied by Secret Service personnel aboard campaign committee chartered aircraft in order that we may expedite review, certification and payment of your bills.

During the 1988 Presidential Campaign, the Secret Service will be making reimbursements for the above services in accordance with guidelines provided in Comptroller General Decision B-130961.141 dated July 5, 1977.

In accordance with this policy, the amount to be reimbursed is determined by computing an individual fare based on the total cost of the chartered flight divided by the total number of seats occupied. This fare is compared with the lowest first-class fare as published in the Official Airline Guide, North American Edition, as constructed over the route of the chartered flight between the origin and destination. The lower of the two fares is multiplied by the number of Secret Service personnel aboard the flight and the campaign committee is reimbursed the resultant amount.

In those cases when there is no scheduled flight listed in the Official Airline Guide between particular segments of a flight, first-class fares may be furnished by the GSA-Transportation Audits Division. When GSA is unable to furnish a published tariff fare, a fare must then be constructed in accordance with Civil Aeronautics Board Rules.

In order to properly audit and certify aircraft charter bills in accordance with the above policy, the Secret Service needs the following information for each flight.

1. Date of flight.
2. Departure and arrival points.
3. Total cost of charter.
4. Total number of seats occupied.
5. Total number of seats occupied by Secret Service personnel.
6. Amount due from U.S. Secret Service.

Additionally, all invoices submitted to the Secret Service for transportation services must include the following certification signed by a duly authorized representative:

"I certify that the above bill is correct and just and that payment therefore has not been received".

The bills should be forwarded to:

The operations center for the appropriate candidate.

Any questions should be referred to Tom McGovern at Financial Management Division, 202/535-5190.

ATTACHMENT #1

FILE: B-130961.141 DATE: July 5, 1977

MATTER OF: United States Secret Service

DIGEST: The method to be used by the Secret Service to reimburse election committees for cost of space occupied by Special Agents aboard aircraft chartered and paid for by the committee is discretionary with the Secretary of the Treasury. 5 U.S.C. 301 (1970); 55 Comp. Gen. 579, 581 (1975). However, method utilizing published tar fares furnished by GSA appears acceptable under stances where discrepancies exist between method by election committee and by Secret Service.

This decision is in response to a request from Duncan Cal an authorized certifying officer of the United States Secret S The request concerns the propriety of paying a voucher for $1, to reimburse the Church for President Committee (Church Commit for space occupied by Special Agents of the United States Secr Service aboard aircraft chartered and paid for by the Church Committee. The aircraft were chartered by the Church Committe to transport Senator Church and his entourage during his 1976 campaign for the Presidency of the United States and the parti voucher concerns a charter from Denver, Colorado, to Scottsblu Nebraska, in April 1976.

Pub. L. No. 90-331, 82 Stat. 170, 18 U.S.C. 3056 (Note) ( provides in pertinent part that the Secret Service is authoriz furnish protection to major presidential or vice-presidential candidates. Because of this requirement, Special Agents accom the various candidates on their tours across the country aboar chartered aircraft. The Secret Service reimburses the various presidential committees for space occupied by its Special Agen aboard the chartered flights as the Department of Defense (DOD is reimbursed for political travel of the President or his sta aboard DOD aircraft.

The amount to be reimbursed the Church Committee is dispu because the Church Committee and the Secret Service used diffe methods to determine that amount. The Church Committee has cl $1,603.72 more on its method than the amount the Secret Servic already has paid it.

ATTACHMENT #2

9 3 0 4 0 9 5 0 6 8 6

B-13[illegible]1.141

The Secret Service determines the amount to be reimbursed th Church Committee by computing an individual fare based on the tot cost of the chartered flight divided by the total number of seats occupied. This fare is compared with the lowest first class fare as published in the Official Airline Guide, North American Editic apparently constructed over the route of the chartered flight between the same origin and destination. The lower of the two fares is multiplied by the number of Special Agents aboard the flight and the Committee is reimbursed the resulting amount. Sir the latter method was utilized here by the Secret Service, as we as by the Church Committee, we assume that that method produced the lowest fare.

The Secret Service and the Church Committee are in basic ag ment as to the method of reimbursement except where there is no scheduled flight listed in the Official Airline Guide between particular segments of the flight. The basic difference seems t that in those situations the Secret Service computes a first cla fare using a mileage formula furnished by the Civil Aeronautics Board (CAB). The Church Committee uses the mileage formula to compute a first class fare to the closest point from or to which a first class fare from origin or to destination is listed in the Official Airline Guide and combines the formula fare with the fa listed in the Guide.

The Secretary of the Treasury is, by law, the head of the Department, 31 U.S.C. 1001 (1970), and is empowered by law to "* * * prescribe regulations for the government of his departmen the conduct of its employees, the distribution and performance o its business * * *." 5 U.S.C. 301 (1970). See also 55 Comp. Ge 579, 581 (1975). Thus, in the absence of any other laws or regulations (and we found none) we believe that the reimbursemen method to be used is discretionary with the Secretary of the Tre and this Office would not object to the method used as long as i is used consistently and does not exceed the first class air far which we understand had been the criteria used by the Secret Ser in the past. However, with respect to the voucher under conside we have some comments and have determined an acceptable method f use in reimbursing the Church Committee.

The Official Airline Guide does not always contain the publ fares in tariffs filed with the CAB and is used primarily for de mining the available service between origin and destination poin A better method would be to use available fares from tariffs on file with the CAB. With this point in mind, the General Service Administration (GSA), Transportation Audits Division furnished th published fares which, with three exceptions, apply to segments the charter flight from Denver to Scottsbluff:



93040950687

B-130961.141

| | | | |
|---|---|---|---|
| April 17 Denver to Grand Junction | $45.37 | CAB 259 page 3 | |
| 8% tax | 3.63 | | |
| | $49 | x 14 Pax = | $ |
| April 18 Grand Junction to Boise | $83.33 | CAB 268 page 2 | |
| 8% tax | 6.67 | | |
| | $90 | x 13 Pax = | $ |
| April 19 Boise to Butte | $77.78 | CAB 268 page 2 | |
| 8% tax | 6.22 | | |
| | $84 | x 13 Pax = | $ |
| Butte to Bozeman | $28.70 | CAB 259 page | |
| 8% tax | 2.30 | | |
| | $31 | x 7 Pax = | |
| April 20 Bozeman to Corvallis | | | |
| Bozeman to Portland | $87.04 | CAB 259 page | |
| 8% tax | 6.96 | | |
| Portland to Corvallis | 20.37 | OAG - Commute | |
| 8% tax | 1.63 | | |
| | $116 | x 4 Pax = | |

No air service Corvallis to Newport

April 21 No air service Newport to Eugene

| | | | |
|---|---|---|---|
| Eugene to Scottsbluff (Apply Grand Island) | $171.30 | CAB 268 page<br>CAB 142, Rul | |
| 8% tax | 13.70 | | |
| | $185 | x 20 Pax = | $3 |
| | | TOTAL: | $7 |

GSA was unable to furnish a published tariff fare for the between Portland and Corvallis (it substituted a commuter fare the Official Airline Guide); also, because no scheduled fligh were available between Corvallis and Newport and between Newp and Eugene, GSA was unable to furnish published fares for tho segments.

The Church Committee determined that it was due first cl totaling $891.68 for the Corvallis-Newport-Eugene segments of charter. Adding these fares to the fares of $7,329 determine GSA results in a total of $8,220.68 due the Church Committee

We adopted the Church Committee's method of determining class fares where there are no scheduled flights listed in th

Official Airline Guide because the mileage formula is used to construct first class fares from or to points from which first class fares published in tariffs are available. This seems reasonable. We also point out that accuracy is one of the obvious advantages of using the published tariff fares. For example, GSA determined that the published fare between Boise and Butte was $1,092, whereas the Secret Service and the Church Committee, utilizing the Official Airline Guide, came up with fares of $943.80, and $1,352, respectiv

GSA has provided this information to other Government agencies upon request and we assume that it will do so in the future. There its expertise could be utilized by the Secret Service when necessar

Because of the discrepancies between the method used by the Se Service and that used by the Church Committee and based on the info mation provided by GSA, we find that the total amount due the Churc Committee is $8,220.68. Therefore, the voucher may be certified for payment of $943, which is the difference between the $7,277.68 already paid to the Church Committee and $8,220.68.

We suggest that the Secret Service promulgate regulations alo the lines discussed in this decision governing the reimbursement to election committees for cost of space occupied aboard chartered aircraft. If requested, we will assist in drafting appropriate regulations.

Deputy Comptroller General
of the United States



9304095068 9

Bush 88 Quayle

733 15th Street, N.W.
Suite 800
Washington, D.C. 20005
(202) 842-1988

OCT 20 1988
RECEIVED

TO: The United States Secret Service

FROM: Bush/Quayle '88

DATE: October 19, 1988

RE: Secret Service Passenger Billing



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In accordance with United States Secret Service billing procedures, the following information is provided by the accounts receivable department of the Bush/Quayle '88, Inc. for the Secret Service transportation on our press charter.

Name of Charter: Dan Quayle

Date: October 13, 1988

From: Missoula F 664 DL

To: Lawton

Cost of Charter: $25,859.00

Number of Passengers: 40

Cost per Passenger: $647.00 646.48

Total due from Secret Service: ~~$9,705.00~~

9697.20

FMAS PAID
CONTROL # ~~[illegible]~~ 1031 0 63
EIN 1 BushQu 20005
PAY DATE/ 11/04/88
[illegible] SCH. # 490027
[illegible] # XX691031 63
[illegible] 2009 [illegible] CNP
O/C 21.34
AMT ~~[illegible]~~ 9697.20
FY 89
PROJECT 051.700

SANDRA E. JENNINGS
Authorized Certifying Offi[illegible]

NOV 4 1988

CAMPAIGN '88

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CANDIDATE PLANE

PAGE I.D.

(1) DATE: 10-13

(2) PAGE: 1 of 8

DQ101390

| ALPHA BY ORG/NAME | LEG(1) MISSOULA-LAWTON | GROUND | LEG(2) LAWTON-FT SM... | GROUND | LEG(3) | GROUND | LEG(4) | GROUND | LEG(5) | GROUND | LEG(6) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| NANCY AMBROSE ABC | | | ✓ | | | | | | | | |
| CARLA DELANDRI ABC | ✓ | | ✓ | | | | | | | | |
| WILLIAM ROBBINS ABC | ✓ | | ✓ | | | | | | | | |
| CHARLES BREIERMAN ABC | ✓ | | ✓ | | | | | | | | |
| JACKIE JUDD ABC | | | | | | | | | | | |
| JOHN COSTELLO CBS | ✓ | | ✓ | | | | | | | | |
| H[illegible] BLOCH CBS | ✓ | | ✓ | | | | | | | | |
| CBS | | | | | | | | | | | |
| CBS | | | | | | | | | | | |
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| CNN | | | | | | | | | | | |
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| CNN | | | | | | | | | | | |
| CNN | | | | | | | | | | | |
| PERCY ARRINGTON NBC | ✓ | | ✓ | | | | | | | | |
| EDGAR BROWN NBC | ✓ | | ✓ | | | | | | | | |
| MARC KOSLOW NBC | ✓ | | ✓ | | | | | | | | |
| NBC | | | | | | | | | | | |
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| EQUIPMENT SEATS | 3 | | 3 | | | | | | | | |
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VP CANDIDATE PLANE

PAGE I.D.

(1) DATE: 10-13

(2) PAGE: 2 of 9

DQ101390

| ALPHA BY ORG/NAME | LEG(1) Missoula - Lawton | GROUND | LEG(2) Lawton - Ft. Sill | GROUND | LEG(3) | GROUND | LEG(4) | GROUND | LEG(5) | GROUND | LEG(6) | GROUND | PA NO |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Eileen Putman AP NEWS | ✓ | | ✓ | | | | | | | | | | |
| | | | | | | | | | | | | | |
| BOST GLOBE | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |
| BOST HERALD | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |
| Cathy Decker TIMES | ✓ | | ✓ | | | | | | | | | | |
| | | | | | | | | | | | | | |
| INDIANAPOLIS STAR | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |
| NEWSDAY | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |
| NSWEEK | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |
| Drummond Ayres NEW YORK TIMES | ✓ | | ✓ | | | | | | | | | | |
| | | | | | | | | | | | | | |
| Dan Goodgame TIME MAG. | ✓ | | ✓ | | | | | | | | | | |
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| TIME PIC. | | | | | | | | | | | | | |
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| ALPHA BY ORG/NAME | LEG(1) MISSOULA - LAWTON | GROUND | LEG(2) LAWTON - FT. SMITH | GROUND | LEG(3) | GROUND | LEG(4) | GROUND | LEG(5) | GROUND | LEG(6) | GROUND | PAY NOT |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| WALL ST JOURNAL | | | | | | | | | | | | | |
| TOM SHERWOOD WASH. POST | ✓ | | ✓ | | | | | | | | | | |
| JENNIFER SPEVACEK WASH. TIMES | ✓ | | ✓ | | | | | | | | | | |
| WILLIAM COULTER HOUSTON CHRONICLE | ✓ | | ✓ | | | | | | | | | | |
| PHIL LENTZ CHICAGO TRIBUNE | ✓ | | ✓ | | | | | | | | | | |
| ALAN PETERSING GANNETT | ✓ | | ✓ | | | | | | | | | | |
| JANE PRENDERGAST GANNETT | ✓ | | / | | | | | | | | | | |
| KEN WALSH U.S. NEWS + W.R. | ✓ | | / | | | | | | | | | | |
| ANGELIA HERRIN KNIGHT RIDDER | ✓ | | ✓ | | | | | | | | | | |
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| ALPHA BY ORG/NAME | LEG(1) MISSOULA - LAWTON | GROUND | LEG(2) LAWTON - Ft. Smith | GROUND | LEG(3) | GROUND | LEG(4) | GROUND | LEG(5) | GROUND | LEG(6) | GROUND |
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| OVP TRAVEL | | | | | | | | | | | | |
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| BFP TRAVEL | | | | | | | | | | | | |
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| SURROGATE TRAVEL | | | | | | | | | | | | |
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| COMPLIANCE TRAVEL | | | | | | | | | | | | |
| BRIAN HARRINGTON | ✓ | | ✓ | | | | | | | | | |
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| ALPHA BY ORG/NAME | LEG(1) MISSOULA-LAWTON | GROUND | LEG(2) LAWTON-FT. SMITH | GROUND | LEG(3) | GROUND | LEG(4) | GROUND | LEG(5) | GROUND | LEG(6) | GROUND |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| VP TRAVEL | | | | | | | | | | | | |
| [illegible] | ✓ | | ✓ | | | | | | | | | |
| [illegible] | | | | | | | | | | | | |
| [illegible] | ✓ | | ✓ | | | | | | | | | |
| [illegible] | ✓ | | ✓ | | | | | | | | | |
| [illegible] | ✓ | | ✓ | | | | | | | | | |
| [illegible] | ✓ | | ✓ | | | | | | | | | |
| Jim Cicc[illegible] | ✓ | | ✓ | | | | | | | | | |
| Ken K[illegible] | ✓ | | ✓ | | | | | | | | | |
| MITCH DANIELS | ✓ | | ✓ | | | | | | | | | |
| DAN EVANS [illegible] FOR SENATE | ✓ | | ✓ | | | | | | | | | |
| CYNTHIA FURNEAU | ✓ | | ✓ | | | | | | | | | |
| MYRNA DUGAN | ✓ | | ✓ | | | | | | | | | |
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|---|---|---|---|---|---|---|---|---|---|---|---|---|
| DAVID PROSPERI<br>PRESS SUPPORT STAFF | ✓ | | ✓ | | | | | | | | | |
| CATHY CAYFIELD<br>PRESS SUPPORT STAFF | ✓ | | ✓ | | | | | | | | | |
| JIM HARRIS<br>PRESS SUPPORT STAFF | ✓ | | ✓ | | | | | | | | | |
| ERIC JOWETT<br>PRESS SUPPORT STAFF | ✓ | | ✓ | | | | | | | | | |
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(3) FIGURE PAGE

| ALPHA BY ORG/NAME | LEG(1) MISSOULA-LAWTON | LEG(2) LAWTON-FT. SMITH | LEG(3) | LEG(4) | LEG(5) | LEG(6) |
|---|---|---|---|---|---|---|
| LEG COST | $25,859.00 | 9403.30 | | | | |
| PRESS PASSENGERS | 24 | 24 | | | | |
| STAFF PASSENGERS | 12 | 12 | | | | |
| PRESS SUPPORT STAFF | 4 | 4 | | | | |
| TOTAL PASSENGERS | 40 | 40 | | | | |
| COST PER PASSENGER | $647.00 | $235.00 | | | | |
| PRESS COST PER PASSENGER | $754.00 | $275.00 | | | | |
| TOTAL LEG COST/ STAFF | $7764.00 | $2820.00 | | | | |
| TOTAL LEG COST/ PRESS | $18,096.00 | $6600.00 | | | | |
| TOTAL LEG COST | $25,860 | $9420.00 | | | | |
| USSS SEATS | 15 | 15 | | | | |
| FIGURING | LAWTON ↓ | | | | | |
| FILING CENTER | YES/NO | YES/NO | YES/NO | YES/NO | YES/NO | YES/NO |
| BUS VENDOR | | | | | | |
| BUS COST | $ NONE | $ | $ | $ | $ | $ |
| STAFF SUPPORT | | | | | | |

9304095 0698

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

**SENSITIVE**

# FIRST GENERAL COUNSEL'S REPORT

MUR 3385
Staff Member: Lawrence D. Parrish

SOURCE: I N T E R N A L L Y   G E N E R A T E D

RESPONDENT: Bush-Quayle 88 and J. Stanley Huckaby, as treasurer

RELEVANT STATUTES: 11 C.F.R. § 9004.6(a)
11 C.F.R. § 9004.6(b)
11 C.F.R. § 9004.6(d)(1)
11 C.F.R. § 9003.2(a)(1)
11 C.F.R. § 9003.2(b)(1)

INTERNAL REPORTS CHECKED: Audit Documents

FEDERAL AGENCIES CHECKED: None

## I. GENERATION OF MATTER

This matter was generated by an audit of Bush-Quayle 88 and J. Stanley Huckaby, as treasurer (the "Committee"), undertaken in accordance with 2 U.S.C. § 438(b).

## II. FACTUAL AND LEGAL ANALYSIS

### A. Background

The Committee in this matter is the principal campaign committee for George Bush and Dan Quayle, Republican candidates for the 1988 offices of President and Vice-President of the United States, for the general election campaign. The Commission approved the Interim Audit Report in this matter on November 14, 1990. On March 13, 1991, the Committee responded to the Interim Audit Report. On August 27, 1991, the Commission voted to refer the matter to the Office of the General Counsel. Subsequently, on October 3, 1991, the Commission voted to revise the August 27, 1991, referral and refer this matter to the Office of the General Counsel.[1] See Attachment 1. On February 8, 1992, the Office of the General Counsel received the Committee's response to the Final Audit Report. See Attachment 2.

The referral concerns the method by which the Committee calculated the amount billed to the press and the Secret Service for the costs of travel on the Committee's chartered aircrafts. The Audit has noted that during the course of reviewing the Committee's records the issue concerning over-billing the press and the Secret Service was revealed. See Attachment 1, pg. 1. The Audit has determined, by understating the number of passengers on the aircraft used the by Committee, the Committee overcharged the Press organizations a total of $133,818.63 for their travel.[2] This overcharging of the Press organizations resulted in the Committee exceeding its 103% actual cost and 110% maximum billable amount as provided under 11 C.F.R. § 9004.6. In addition, the Audit noted that the Secret Service

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1. The amounts involved in this matter have been recalculated by Audit as a result of the Commission's decision to revise the referral.

2. The Committee when calculating the cost of travel for the Press organizations and the Secret Service failed to add the number of Secret Service passengers to the total number of passengers on the flight. Therefore, when the cost of the flight was divided by the number of the persons on the aircraft to determine a pro rata cost, it did not include the Secret Service passengers, which resulted in overcharging the Press organizations and the Secret Service.

was overcharged an amount of $60,590.83 in excess of the Committee's per seat cost of the Bush and Quayle charters.[3] (<u>See</u> Attachment 1, pg. 2. for discussion on calculation of travel cost.)

1. <u>**Press Plane**</u>

Pursuant to 11 C.F.R. § 9004.6(a) and (b), if an authorized committee incurs expenditures for transportation, group services and facilities (including air travel, ground transportation, housing, meals, telephone service, typewriters) made available to media personnel, such expenditures will be considered qualified campaign expenses subject to the overall expenditure limitations of 11 C.F.R. § 9003.2(a)(1) and (b)(1). Furthermore, if reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each individual shall not exceed either the individual's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the individual's pro rata share of the actual cost of the transportation and services made available. An individual's pro rata share shall be calculated by dividing the total number of individuals to whom such

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3. The Audit has noted that the Committee's disclosure reports contained a total of $106,012.67 in credits due to various Press organizations. <u>See</u> Attachment 1, pg. 13. The Audit further noted that a review of the records provided to them indicated that $61,557.67 of this amount was related to prepayments to the Committee but had not been applied to any billing. The Audit has determined that this amount should be refunded and has included this amount as payable on the Committee's Net Outstanding Qualified Campaign Expenses Statement. In addition, the Audit has added the $61,557.67 to the Committee's expenditures subject to the spending limitation since the receipts were considered offsets to the operating expenditures.

transportation and services are made available into the total cost of the transportation and services. The total amount of reimbursements received from an individual under this section shall not exceed the actual pro rata cost of the transportation and services made available to that person by more than 10%.

Pursuant to 11 C.F.R. § 9004.6(d)(1), the committee may deduct from the amount of expenditures subject to the overall expenditure limitation of 11 C.F.R. § 9003.2(a)(1) and (b)(1), the amount of reimbursements received for the actual cost for transportation and services provided under paragraph (a) of this section. The committee may also deduct from the overall expenditure limitation an additional amount of reimbursements received equal to 3% of the actual cost of transportation and services provided under this section as the administrative cost to the committee of providing such services to media personnel and seeking reimbursement for them. If the committee has incurred higher administrative costs in providing these services, the committee must document the total cost incurred for such services in order to deduct a higher amount of reimbursements received from the overall expenditure limitation. Amounts reimbursed that exceed the amount actually paid by the committee for transportation and services provided under paragraph (a) of this section plus the amount of administrative costs permitted by this section shall be repaid to the Treasury. Amounts paid by the committee for transportation, services and administrative costs for which no reimbursement is received will be considered qualified campaign expenses subject to the overall expenditure limitation in accordance with paragraph (a) of this section.

According to the Explanation and Justification of 11 C.F.R. § 9004.6 52 Fed. Reg. 20866 (June 3, 1987), committees may deduct an additional 3% of the direct cost of providing services to the media if reimbursements in that amount are received. The additional 3% is intended to cover the administrative cost to the campaign of making media travel arrangements, tracking which media personnel are accompanying the candidate on each leg of the campaign, and billing the media organizations for their share of the expenses. These administrative costs are not part of the direct cost of providing media transportation and services and may not be included in the calculation of direct costs for billing purposes, whether the committee uses its own staff to perform these tasks or hires a travel consultant and collection agency. Furthermore, this new provision would continue to limit the amount billed to 110% of the direct cost of the services but would allow committees to deduct 103% rather than 100% of the direct costs from the expenditure limit if sufficient reimbursements are received.

Between August of 1988 and November 9, 1988, the Committee in this matter provided a plane for members of the Press to accompany Air Force II. This aircraft normally carried two Secret Service agents and four Committee administrative staff in addition to the members of the Press. On some occasions a small number of other Committee staff would be aboard the aircraft. The Committee also provided a second aircraft which was used by

Vice President Quayle, media personnel, a number of Secret Service agents and Committee staff (which usually included four persons assigned to the Press travel program).

<u>See</u> Attachment 1, pg. 7.

a. <u>George Bush Press Plane</u>

The Audit has determined that the total billable cost for air transportation and services for the Press was $2,167,245.51. This amount included $172,705.81 in administrative expenses from the Press travel program, incurred by the Committee staff, for travel, salary and subsistence. The maximum billable amount that the Committee could charge the Press for transportation and services was $2,383,970.06. The maximum billable amount is computed by multiplying the total billable cost by 110% ($2,167,245.51 in total billable cost x 110% = $2,383,970.06 maximum billable amount). The Committee received a total of $2,255,178.73 in reimbursements from the Press for transportation and services. The Audit has determined that the $2,255,178.73 in reimbursements that the Committee received is less than the Committee's 110% maximum billable amount of $2,383,970.06, therefore, no refund is due to the Press.

According to 11 C.F.R. § 9004.6(b), it is permissible for the Committee to receive reimbursements up to 110% of the actual pro rata cost of the transportation and services provided to the Press. But the Committee may only offset an amount equal to 103% of the actual cost against the spending limitation. This amount includes the actual cost (100%) of the transportation and services and an additional 3% for administrative cost of providing the services. See 11 C.F.R. § 9004.6(d)(1). A Committee may deduct an amount higher than 103%, but only if it has administrative costs which exceed 3% and can provide documentation for such services. Id. Any amount that exceeds the actual cost and the administrative cost must be repaid to the U.S. Treasury. Id. The Committee's 3% administrative cost for the Bush Press plane is $65,017.37 (3% x $2,167,245.51 in actual cost = $65,017.37 administrative cost). The Committee's total billable cost ($2,167,245.51) plus its 3% administrative cost ($65,017.37) totals $2,232,262.88 (103%). The $2,255,178.73 in reimbursements that the Committee received minus the 103% billable cost ($2,232,262.88) totals $22,915.85. The Committee has not submitted any documentation which would indicate that its administrative cost exceeded 3%. Thus, $22,915.85 is in excess of the 103% billable cost. (See Audit's Calculations of Refunds Due the Press and Repayments Due the U.S. Treasury. Attachment 3).

b. Dan Quayle Charter

The Audit has determined the total billable cost for air transportation and services on the Dan Quayle charter to the Press was $1,042,756.61. This amount included $148,995.99 in administrative expenses from the Press travel program, incurred by the Committee staff, for travel, salary and subsistence. The maximum billable amount that the Committee could charge the Press for transportation and services was $1,147,032.27. The maximum billable amount is computed by multiplying the total billable cost by 110% ($1,042,756.61 in total billable cost x 110% = $1,147,032.27 maximum billable amount). The Committee received a total of $1,280,850.90 in reimbursements from the Press for transportation and services. The Audit has determined that the $1,280,850.90 in reimbursements that the Committee received is $133,818.63 in excess of the Committee's maximum billable amount of $1,147,032.27 ($1,280,850.90 in reimbursements - $1,147,032.27 maximum billable amount = $133,818.63 in excess).[4]

As noted above, according to 11 C.F.R. § 9004.6(b), it is permissible for the Committee to receive reimbursements up to 110% of the actual pro rata cost of the transportation and services provided to the Press. But the Committee may only offset an amount equal to 103% of the actual cost against the spending limitation. This amount includes the actual cost (100%) of the transportation and services and an additional 3% for administrative cost of providing the services. See 11 C.F.R. § 9004.6(d)(1). A Committee may deduct an amount higher than 103%, but only if it has administrative costs which exceed 3% and can provide documentation for such services. Id. Any amount that exceeds the actual cost and the administrative cost must be repaid to the the U.S. Treasury. Id. The Committee's 3% administrative cost for the Dan Quayle Charter

4. The Audit noted that this amount has been added to the Committee's expenditures subject to the spending limitation and also has been included on the Committee's Statement of Net Outstanding Qualified Campaign Expenses as a payable to the various Press organizations that was over billed during the campaign.

plane is $31,282.70 (3% x $1,042,756.61 in actual cost = $31,282.70 in administrative cost). The Committee's total billable cost ($1,042,756.61) plus its 3% administrative cost ($31,282.70) totals $1,074,039.31 (103%). The Committee's 110% maximum billable amount ($1,147,032.27) exceeds the Committee's 103% actual cost ($1,074,039.31) by $72,992.96. Therefore, it appears that the Committee has received $72,992.96 in excess of its 103% actual cost, but less than 110% of its cost of providing transportation and other services to the Press.

Based upon the Audit, it appears that the combined total of $95,908.81 ($22,915.85 from the Bush plane + $72,992.96 from the Quayle Charter) is in excess of the Committee's 103% actual cost, but less than 110% of its maximum billable amount for the cost of providing transportation and other services to the Press. Furthermore, it appears that the Committee has received $133,818.63 in excess of its maximum billable amount from the Press (this is the amount over the 110% of the actual cost relating to the Dan Quayle charter).

c. <u>Response From the Committee</u>

As noted above, the Office of the General Counsel received a response to the Final Audit Report from the Committee's treasurer on February 8, 1992. <u>See</u> Attachment 2. The Committee's treasurer does not dispute the Audit calculation, but does dispute the method used by the Audit in its finding concerning the billing of the Press plane. The Committee's treasurer argues that the Audit should not have divided the campaign's press billing and collection function for the Bush Press plane and the Quayle charter "into two separate, non-connected organizations." The Committee's treasurer argues further:

> [t]he Committees believe that the auditors have made an arbitrary and unsupportable distinction in the Final Audit Report by dividing the Campaign's press plane operations between billings and receipts for planes referenced in the final Audit Report as "George Bush Press Plane" and "Dan Quayle Charter". [sic] There was no such division made in the Interim Audit Report, nor is such a distinction warranted. Rather, the Committees functioned with one press plane billing and collection operation.

The Committee treasurer's contention that the billings for the Bush plane and the Quayle charter should not be divided into separate billings is based on several reasons. The Committee's treasurer states the following:

> Many press organizations had representatives on each plane; however, they did not receive separate billings for travel on each plane. Instead, the press organizations were issued one bill for all press travel connected with the campaign. Furthermore, the payments from the press organizations were frequently made in lump sum amounts. The press did not send payments for travel that was specifically connected with one plane or another.

The Committee's treasurer states further:

> When such payments arrived, the procedure was to apply the amount to the oldest outstanding invoice(s) for the press organization. On occasion, a subsequent payment from a media organization might reference an invoice already paid, or an invoice already credited from a prior lump sum payment, in which case the most recent payment would again be applied to the oldest outstanding invoice(s).

In addition to the above-mentioned reasons, the Committee's treasurer also states that the Committee "... did not split their office billing staff involved in press plane operations," and that "... the same staff handled all press billing and collection functions for all press travel." It is the Committee treasurer's assertion that had the Audit calculated the two press plane operations together, the amount in excess of the 110% maximum billable would be only $5,027.30 and the amount in excess of the 103% actual cost, but less than 110% would be $224,700.15. The following chart explains the Committee's figures if the two press plane operations were calculated together:

**Committee's Calculations**

| | |
|---|---|
| Received from the Press | $3,536,029.63 |
| Correct Billable Cost Per Audit | $3,210,002.12 |
| 10% of Correct Billable Cost | 321,000.21 |
| Correct Billable plus 10% | 3,531,002.33 |
| **Amount in excess of 110%** | 5,027.30 |

| | |
|---|---|
| Received from the Press | $3,536,029.63 |
| Correct Billable Cost per Audit | $3,210,002.12 |
| 3% Administration Fee | 96,300.06 |
| Correct Billable plus 3% | 3,306,302.18 |
| **Less amount in excess of 110%** | 5,027.30 |
| **Amount in excess of 103%, but less than 110%** | $ 224,700.15 |

**(These figures are based on the Committee combining the total of the Bush and Quayle charters)**

On June 16, 1992, the Commission approved a Statement of Reasons in the final repayment determination that rejected the Committee's calculations.

d. **Secret Service Billings**

As noted above, the Audit has revealed that the Committee has over-billed the Secret Service a total of $60,590.83 in excess of the Committee's per seat cost of the Bush and Quayle charters by understating the number of passengers on the aircraft. The Audit further noted that this matter has no effect on the Committee's compliance with the spending limitations or repayment implication, and does not appear to violate the Act or the Commission's regulations.

## III. CONCLUSION

Based upon the above-mentioned information, it appears that the Committee has received $133,818.63 in excess of its 110% maximum billable amount from the Press, and also has received a combined total of $95,908.81 in excess of its 103% actual cost, but less than 110% of its maximum billable amount for the cost of providing transportation and other services to the Press.

The following chart explains the Audit's calculations:

**Audit's Calculations**

**BUSH PRESS PLANE**

**Amount over 110% maximum billable amount**

| | |
|---|---|
| Billable Costs Per Audit | 2,167,245.51 |
| Add: 10% Administrative Costs | 216,724.55 |
| Maximum Billable Amount | 2,383,970.00 |
| Amount Received From Press | 2,255,176.00 |
| Amount excessive of 110% | -0- |

**Amount received in excess of its 103% actual cost, but less than 110% of its maximum billable amount**

| | |
|---|---|
| Billable Costs | $2,167,245.51 |
| Add: 3% Administrative Costs | 65,017.37 |
| Billable Cost Plus 3% | 2,232,262.00 |
| Less: Amount Received From the Press | 2,255,178.00 |
| Amount in excess of 103% but less than 110% | $22,915.00 |

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**QUAYLE CHARTER**

**Amount over 110% maximum billable amount**

| | |
|---|---|
| Billable Costs Per Audit | 1,042,756.61 |
| Add: 10% Mark-up | 104,275.66 |
| Maximum Billable Amount | 1,147,032.27 |
| Amount Received From Press | 1,280,850.90 |
| Amount excessive of 110% | $ 133,818.63 |

**Amount received in excess of its 103% actual cost, but less than 110% of its maximum billable amount.**

| | |
|---|---|
| Billable Costs | $1,042,756.61 |
| Add: 3% Administrative Costs | 31,282.70 |
| Billable Cost Plus 3% | 1,074,039.31 |
| Less: Maximum Billable Amount | 1,147,032.27 |
| Amount in excess of 103% but less than 110% | $72,992.92 |

**BUSH/QUAYLE COMBINED TOTAL**

| | |
|---|---|
| Amount excessive of 110% | $ 133,818.63 |
| Amount in excess of 103% but less than 110% | $95,908.81 |

The purpose of the 11 C.F.R. § 9004.6(b) was not to enrich the Committee or U.S. Treasury from overcharging the Press, but instead to ease the burden of accounting precisely for the costs of the transportation and services in the heat of the campaign and to permit reimbursements received from some media organizations to compensate for those that do not pay in full. See Explanation and Justification of 11 C.F.R. § 9004.6, 52 Fed. Reg. 20866, (June 3, 1987). Therefore, the Office of the General Counsel recommends that the Commission find reason to believe that Bush-Quayle 88 Committee and J. Stanley Huckaby, as treasurer, violated 11 C.F.R. § 9004.6 by failing to follow the prescribed method of calculating the actual cost of transportation and services made available to the media.

As to the issue concerning the Committee over-billing the Secret Service, as noted above, this matter does not affect the Committee's compliance with the spending limitations or repayment implication, and does not appear to violate the Act or the Commission's regulations.

## III. RECOMMENDATIONS

1. Find reason to believe that Bush-Quayle 88 Committee and J. Stanley Huckaby, as treasurer, violated 11 C.F.R. § 9004.6.

2. Approve the attached letter and Factual and Legal Analysis.

3.

6/29/92
Date

Lawrence M. Noble
General Counsel

Attachments:

1. October 3, 1991 Audit Referral
2. February 8, 1992 response from Committee
3. Audit's calculations
4. Factual and Legal Analysis

Staff assigned: Lawrence D. Parrish

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**MEMORANDUM**

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DONNA ROACH
COMMISSION SECRETARY

DATE: JULY 7, 1992

SUBJECT: MUR 3385 - FIRST GENERAL COUNSEL'S REPORT DATED JUNE 29, 1992.

The above-captioned document was circulated to the Commission on TUES., JUNE 30, 1992 at 4:00 P.M.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

| | |
|---|---|
| Commissioner Aikens | XXX |
| Commissioner Elliott | |
| Commissioner McDonald | |
| Commissioner McGarry | |
| Commissioner Potter | |
| Commissioner Thomas | XXX |

This matter will be placed on the meeting agenda for TUESDAY, JULY 28, 1992.

Please notify us who will represent your Division before the Commission on this matter.

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | MUR 3385 |
| Bush-Quayle 88 and J. Stanley | ) | |
| Huckaby, as treasurer | ) | |

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on July 28, 1992, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 3385:

1. Find reason to believe that Bush-Quayle 88 Committee and J. Stanley Huckaby, as treasurer, violated 11 C.F.R. § 9004.6.

2. Approve the letter and Factual and Legal Analysis as recommended in the General Counsel's report dated June 29, 1992, as amended by the General Counsel's memorandum dated July 10, 1992.

3.

(continued)

4. Direct the Office of General Counsel to prepare a conciliation agreement and circulate it for Commission approval on a tally vote basis.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Potter was not present during the consideration of this matter.

Attest:

7-31-92
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

| | | |
|---|---|---|
| In the Matter of<br><br>Bush-Quayle 88 and<br>J. Stanley Huckaby, as treasurer | ) | MUR 3385 |

## GENERAL COUNSEL'S REPORT

### I. BACKGROUND

On July 28, 1992, the Commission found reason to believe that Bush-Quayle 88 Committee and J. Stanley Huckaby, as treasurer, violated 11 C.F.R. § 9004.6, by failing to follow the prescribed method of calculating the actual cost of transportation and services made available to the media. (See General Counsel's Report dated June 29, 1992). On that same day, the Commission directed the Office of the General Counsel to prepare a conciliation agreement in this matter and circulate it for the Commission's approval.

### II. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

III. RECOMMENDATION

Approve the attached proposed conciliation agreement and the appropriate letter.

9/17/92
Date

Lawrence M. Noble
General Counsel

Attachments:
1.
2. Proposed Conciliation Agreement

Staff assigned: Lawrence D. Parrish

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**MEMORANDUM**

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DONNA ROACH DR
COMMISSION SECRETARY

DATE: SEPTEMBER 21, 1992

SUBJECT: MUR 3385 - GENERAL COUNSEL'S REPORT
DATED SEPTEMBER 17, 1992

The above-captioned document was circulated to the Commission on THURSDAY, SEPTEMBER 17, 1992 at 4:00 P.M.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

| | |
|---|---|
| Commissioner Aikens | |
| Commissioner Elliott | |
| Commissioner McDonald | XXX |
| Commissioner McGarry | |
| Commissioner Potter | |
| Commissioner Thomas | |

This matter will be placed on the meeting agenda for TUESDAY, SEPTEMBER 29, 1992.

Please notify us who will represent your Division before the Commission on this matter.

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS / DONNA ROACH DR
COMMISSION SECRETARY

DATE: SEPTEMBER 22, 1992

SUBJECT: MUR 3385 - GENERAL COUNSEL'S REPORT
DATED SEPTEMBER 17, 1992.

The above-captioned document was circulated to the Commission on THURSDAY, SEPTEMBER 17, 1992 4:00 P.M.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

| | |
|---|---|
| Commissioner Aikens | |
| Commissioner Elliott | |
| Commissioner McDonald | |
| Commissioner McGarry | |
| Commissioner Potter | |
| Commissioner Thomas | XXX |

This matter will be placed on the meeting agenda for TUESDAY, SEPTEMBER 29, 1992.

Please notify us who will represent your Division before the Commission on this matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )
) MUR 3385
Bush-Quayle 88 and )
J. Stanley Huckaby, as treasurer. )

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on September 29, 1992, do hereby certify that the Commission decided by a vote of 5-0 to reject the recommendation contained in the General Counsel's September 17, 1992 report on MUR 3385, and instead take the following actions in this matter.

1. Approve a revised conciliation agreement

(continued)

2. Send appropriate letters pursuant to the actions noted above and the meeting discussion.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision. Commissioner Potter recused himself with respect to MUR 3385 and was not present during its consideration.

Attest:

10-1-92
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 22, 1992

J. Stanley Huckaby, Treasurer
Bush-Quayle 88 Committee
228 South Washington Street
Alexandria, Virginia 22314

RE: MUR 3385
Bush-Quayle 88 and J. Stanley Huckaby, as treasurer

Dear Mr. Huckaby:

On July 28, 1992, the Federal Election Commission found that there is reason to believe Bush-Quayle 88 ("Committee") and you, as treasurer, violated 11 C.F.R. § 9004.6, a provision of the Commission's regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the Committee and you, as treasurer. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against the Committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe,

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are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Lawrence D. Parrish, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures
  Factual and Legal Analysis
  Procedures
  Designation of Counsel Form
  Conciliation Agreement

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Bush-Quayle 88 and J. Stanley Huckaby, as treasurer MUR: 3385

This matter was generated based on information ascertained by the Federal Election Commission ("Commission") in the normal course of carrying out its supervisory responsibilities. 2 U.S.C. § 437g(a)(2). It is based on the audit of the Bush-Quayle 88 and J. Stanley Huckaby, as treasurer (the "Committee"), undertaken in accordance with 26 U.S.C. § 9007(a) and 11 C.F.R. § 9007.1.

A. <u>FACTUAL AND LEGAL ANALYSIS</u>

This matter concerns the method by which the Committee calculated the amount billed to the press and the Secret Service for the costs of travel on the Committee's chartered aircrafts. The Audit noted that during the course of reviewing the Committee's records the issue concerning over-billing the press and the Secret Service was revealed. The Audit has determined, by understating the number of passengers on the aircraft used the by Committee, the Committee overcharged the Press organizations a total of $133,818.63 for their travel.[1] This

1. The Committee when calculating the cost of travel for the Press organizations and the Secret Service failed to add the number of Secret Service passengers to the total number of passengers on the flight. Therefore, when the cost of the flight was divided by the number of the persons on the aircraft to determine a pro rata cost, it did not include the Secret Service passengers, which resulted in overcharging the Press organizations and the Secret Service.

overcharging of the Press organizations resulted in the Committee exceeding its 103% actual cost and 110% maximum billable amount as provided under 11 C.F.R. § 9004.6.

1. <u>Press Plane</u>

Pursuant to 11 C.F.R. § 9004.6(a) and (b), if an authorized committee incurs expenditures for transportation, group services and facilities (including air travel, ground transportation, housing, meals, telephone service, typewriters) made available to media personnel, such expenditures will be considered qualified campaign expenses subject to the overall expenditure limitations of 11 C.F.R. § 9003.2(a)(1) and (b)(1). Furthermore, if reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each individual shall not exceed either the individual's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the individual's pro rata share of the actual cost of the transportation and services made available. An individual's pro rata share shall be calculated by dividing the total number of individuals to whom such transportation and services are made available into the total cost of the transportation and services. The total amount of reimbursements received from an individual under this section shall not exceed the actual pro rata cost of the transportation and services made available to that person by more than 10%.

Pursuant to 11 C.F.R. § 9004.6(d)(1), the committee may deduct from the amount of expenditures subject to the overall expenditure limitation of 11 C.F.R. § 9003.2(a)(1) and (b)(1), the amount of reimbursements received for the actual cost for transportation and services provided under paragraph (a) of this section. The committee may also deduct from the overall expenditure limitation an additional amount of reimbursements received equal to 3% of the actual cost of transportation and services provided under this section as the administrative cost to the committee of providing such services to media personnel and seeking reimbursement for them. If the committee has incurred higher administrative costs in providing these services, the committee must document the total cost incurred for such services in order to deduct a higher amount of reimbursements received from the overall expenditure limitation. Amounts reimbursed that exceed the amount actually paid by the committee for transportation and services provided under paragraph (a) of this section plus the amount of administrative costs permitted by this section shall be repaid to the Treasury. Amounts paid by the committee for transportation, services and administrative costs for which no reimbursement is received will be considered qualified campaign expenses subject to the overall expenditure limitation in accordance with paragraph (a) of this section.

According to the Explanation and Justification of 11 C.F.R. § 9004.6 52 <u>Fed</u>. <u>Reg</u>. 20866 (June 3, 1987), committees may deduct an additional 3% of the direct cost of providing services to the media if reimbursements in that amount are received. The additional 3% is intended to cover the administrative cost to the campaign of making media travel arrangements, tracking which media personnel are accompanying the candidate on each leg of the campaign, and billing the media organizations for their share of the expenses. These administrative costs are not part of the direct cost of providing media transportation and services and may not be included in the calculation of direct costs for billing purposes, whether the committee uses its own staff to perform these tasks or hires a travel consultant and collection agency. Furthermore, this new provision would continue to limit the amount billed to 110% of the direct cost of the services but would allow committees to deduct 103% rather than 100% of the direct costs from the expenditure limit if sufficient reimbursements are received.

Between August of 1988 and November 9, 1988, the Committee in this matter provided a plane for members of the Press to accompany Air Force II. This aircraft normally carried two Secret Service agents and four Committee administrative staff in addition to the members of the Press. On some occasions a small number of other Committee staff would be aboard the aircraft. The Committee also provided a second aircraft which was used by Vice President Quayle, media personnel, a number of Secret Service agents and Committee staff (which usually included four persons assigned to the Press travel program).

a. <u>George Bush Press Plane</u>

The Audit has determined that the total billable cost for air transportation and services for the Press was $2,167,245.51. This amount included $172,705.81 in administrative expenses from the Press travel program, incurred by the Committee staff, for travel, salary and subsistence. The maximum billable amount that the Committee could charge the Press for transportation and services was $2,383,970.06. The maximum billable amount is computed by multiplying the total billable cost by 110% ($2,167,245.51 in total billable cost x 110% = $2,383,970.06 maximum billable amount). The Committee received a total of $2,255,178.73 in reimbursements from the Press for transportation and services. The Audit has determined that the $2,255,178.73 in reimbursements that the Committee received is less than the Committee's 110% maximum billable amount of $2,383,970.06, therefore, no refund is due to the Press.

According to 11 C.F.R. § 9004.6(b), it is permissible for the Committee to receive reimbursements up to 110% of the actual pro rata cost of the transportation and services provided to the Press. But the Committee may only offset an amount equal to 103% of the actual cost against the spending limitation. This amount includes the actual cost (100%) of the transportation and services and an additional 3% for administrative cost of providing the services. See 11 C.F.R. § 9004.6(d)(1). A Committee may deduct an amount higher than 103%, but only if it has administrative costs which exceed 3% and can provide documentation for such services. Id. Any amount that exceeds the actual cost and the administrative cost must be repaid to the U.S. Treasury. Id. The Committee's 3% administrative cost for the Bush Press plane is $65,017.37 (3% x $2,167,245.51 in actual cost = $65,017.37 administrative cost). The Committee's total billable cost ($2,167,245.51) plus its 3% administrative cost ($65,017.37) totals $2,232,262.88 (103%). The $2,255,178.73 in reimbursements that the Committee received minus the 103% billable cost ($2,232,262.88) totals $22,915.85. The Committee has not submitted any documentation which would indicate that its administrative cost exceeded 3%. Thus, $22,915.85 is in excess of the 103% billable cost. (<u>See</u> below chart of calculations).

b. <u>Dan Quayle Charter</u>

The Audit has determined the total billable cost for air transportation and services on the Dan Quayle charter to the Press was $1,042,756.61. This amount included $148,995.99 in administrative expenses from the Press travel program, incurred by the Committee staff, for travel, salary and subsistence. The maximum billable amount that the Committee could charge the Press for transportation and services was $1,147,032.27. The maximum billable amount is computed by multiplying the total billable cost by 110% ($1,042,756.61 in total billable cost x 110% = $1,147,032.27 maximum billable amount). The Committee received a total of $1,280,850.90 in reimbursements from the Press for transportation and services. The Audit has determined that the $1,280,850.90 in reimbursements that the Committee received is $133,818.63 in excess of the Committee's maximum billable amount of $1,147,032.27 ($1,280,850.90 in reimbursements - $1,147,032.27 maximum billable amount = $133,818.63 in excess).

As noted above, according to 11 C.F.R. § 9004.6(b), it is permissible for the Committee to receive reimbursements up to 110% of the actual pro rata cost of the transportation and services provided to the Press. But the Committee may only offset an amount equal to 103% of the actual cost against the spending limitation. This amount includes the actual cost (100%) of the transportation and services and an additional 3% for administrative cost of providing the services. See 11 C.F.R. § 9004.6(d)(1). A Committee may deduct an amount higher than 103%, but only if it has administrative costs which exceed 3% and can provide documentation for such services. Id. Any amount that exceeds the actual cost and the administrative cost must be repaid to the the U.S. Treasury. Id. The Committee's 3% administrative cost for the Dan Quayle Charter plane is $31,282.70 (3% x $1,042,756.61 in actual cost = $31,282.70 in administrative cost). The Committee's total billable cost ($1,042,756.61) plus its 3% administrative cost ($31,282.70) totals $1,074,039.31 (103%). The Committee's 110% maximum billable amount ($1,147,032.27) exceeds the Committee's 103% actual cost ($1,074,039.31) by $72,992.96. Therefore, it appears that the Committee has received $72,992.96 in excess of its 103% actual cost, but less than 110% of its cost of providing transportation and other services to the Press.

Based upon the Audit, it appears that the combined total of $95,908.81 ($22,915.85 from the Bush plane + $72,992.96 from the Quayle Charter) is in excess of the Committee's 103% actual cost, but less than 110% of its maximum billable amount for the cost of providing transportation and other services to the Press. Furthermore, it appears that the Committee has received $133,818.63 in excess of its maximum billable amount from the Press (this is the amount over the 110% of the actual cost relating to the Dan Quayle charter).

c. Response From the Committee

As noted above, the Office of the General Counsel received a response to the Final Audit Report from the Committee's treasurer on February 8, 1992. See Attachment 2. The Committee's treasurer does not dispute the Audit calculation, but does dispute the method used by the Audit in its finding concerning the billing of the Press plane. The Committee's treasurer argues that the Audit should not have divided the campaign's press billing and collection function for the Bush Press plane and the Quayle charter "into two separate, non-connected organizations." The Committee's treasurer argues further:

> [t]he Committees believe that the auditors have made an arbitrary and unsupportable distinction in the Final Audit Report by dividing the Campaign's press plane operations between billings and receipts for planes referenced in the final Audit Report as "George Bush Press Plane" and "Dan Quayle Charter". [sic] There was no such division made in the Interim Audit Report, nor is such a distinction warranted. Rather, the Committees functioned with one press plane billing and collection operation.

The Committee treasurer's contention that the billings for the Bush plane and the Quayle charter should not be divided into separate billings is based on several reasons. The Committee's treasurer states the following:

> Many press organizations had representatives on each plane; however, they did not receive separate billings for travel on each plane. Instead, the press organizations were issued one bill for all press travel connected with the campaign. Furthermore, the payments from the press organizations were frequently made in lump sum amounts. The press did not send payments for travel that was specifically connected with one plane or another.

The Committee's treasurer states further:

> When such payments arrived, the procedure was to apply the amount to the oldest outstanding invoice(s) for the press organization. On occasion, a subsequent payment from a media organization might reference an invoice already paid, or an invoice already credited from a prior lump sum payment, in which case the most recent payment would again be applied to the oldest outstanding invoice(s).

In addition to the above-mentioned reasons, the Committee's treasurer also states that the Committee "... did not split their office billing staff involved in press plane operations," and that "... the same staff handled all press billing and collection functions for all press travel." It is the Committee treasurer's assertion that had the Audit calculated the two press plane operations together, the amount in excess of the 110% maximum billable would be only $5,027.30 and the amount in excess of the 103% actual cost, but less than 110% would be $224,700.15. The following chart explains the Committee's figures if the two press plane operations were calculated together:

<u>Committee's Calculations</u>

| | |
|---|---|
| Received from the Press | $3,536,029.63 |
| Correct Billable Cost Per Audit | $3,210,002.12 |
| 10% of Correct Billable Cost | 321,000.21 |
| Correct Billable plus 10% | 3,531,002.33 |
| Amount in excess of 110% | 5,027.30 |

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| | |
|---|---|
| Received from the Press | $3,536,029.63 |
| Correct Billable Cost per Audit | $3,210,002.12 |
| 3% Administration Fee | 96,300.06 |
| Correct Billable plus 3% | 3,306,302.18 |
| Less amount in excess of 110% | 5,027.30 |
| Amount in excess of 103%, but less than 110% | $ 224,700.15 |

(These figures are based on the Committee combining the total of the Bush and Quayle charters)

On June 16, 1992, the Commission approved a Statement of Reasons in the final repayment determination that rejected the Committee's calculations.

B. <u>CONCLUSION</u>

Based upon the above-mentioned information, it appears that the Committee has received $133,818.63 in excess of its 110% maximum billable amount from the Press, and also has received a combined total of $95,908.81 in excess of its 103% actual cost, but less than 110% of its maximum billable amount for the cost of providing transportation and other services to the Press.

## Audit's Calculations

### BUSH PRESS PLANE

**Amount over 110% maximum billable amount**

| | |
|---|---|
| Billable Costs Per Audit | 2,167,245.51 |
| Add: 10% Administrative Costs | 216,724.55 |
| Maximum Billable Amount | 2,383,970.00 |
| Amount Received From Press | 2,255,178.00 |
| Amount excessive of 110% | -0- |

**Amount received in excess of its 103% actual cost, but less than 110% of its maximum billable amount**

| | |
|---|---|
| Billable Costs | $2,167,245.51 |
| Add: 3% Administrative Costs | 65,017.37 |
| Billable Cost Plus 3% | 2,232,262.88 |
| Less: Amount Received From the Press | 2,255,178.73 |
| Amount in excess of 103% but less than 110% | $22,915.85 |

---

### QUAYLE CHARTER

**Amount over 110% maximum billable amount**

| | |
|---|---|
| Billable Costs Per Audit | 1,042,756.61 |
| Add: 10% Mark-up | 104,275.66 |
| Maximum Billable Amount | 1,147,032.27 |
| Amount Received From Press | 1,280,850.90 |
| Amount excessive of 110% | $ 133,818.63 |

**Amount received in excess of its 103% actual cost, but less than 110% of its maximum billable amount**

| | |
|---|---|
| Billable Costs | $1,042,756.61 |
| Add: 3% Administrative Costs | 31,282.70 |

**QUAYLE CHARTER cont'd**

| | |
|---|---|
| Billable Cost Plus 3% | 1,074,039.31 |
| Less: Maximum Billable Amount | 1,147,032.27 |
| **Amount in excess of 103% but less than 110%** | **$72,992.96** |

**BUSH/QUAYLE COMBINED TOTAL**

| | |
|---|---|
| **Amount excessive of 110%** | **$ 133,818.63** |
| **Amount in excess of 103% but less than 110%** | **$95,908.81** |

The purpose of the 11 C.F.R. § 9004.6(b) was not to enrich the Committee or U.S. Treasury from overcharging the Press, but instead to ease the burden of accounting precisely for the costs of the transportation and services in the heat of the campaign and to permit reimbursements received from some media organizations to compensate for those that do not pay in full. See Explanation and Justification of 11 C.F.R. § 9004.6, 52 Fed. Reg. 20866, (June 3, 1987). Based upon the foregoing, it appears that the Committee has violated the Commission's regulations by failing to follow the prescribed method of calculating the actual cost of transportation and services made available to the media.

Therefore, there is reason to believe that the Bush-Quayle 88 Committee and J. Stanley Huckaby, as treasurer, violated 11 C.F.R. § 9004.6.

Bush '88 Quayle

STAN HUCKABY, Treasurer

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIN COPY ROOM

Nov 20 10 57 AM '92

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

92 NOV 20 PM 3: 35

November 18, 1992

Mr. Lawrence D. Parrish
Office of the General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: Mur 3385

Dear Mr. Parrish:

The letter from Chairman Aikens informing me of MUR 3385 was received on Friday, November 6, 1992.

Since then, I have been out of town on previously scheduled matters, and our offices have also been disrupted resulting from the move of the Bush-Quayle '92 winddown operations from the Washington, DC headquarters back to Alexandria, VA.

Accordingly, I am requesting an additional twenty days in which to respond to the Chairman's letter with respect to MUR 3385, which would set a due date for the response of December 15, 1992. Thank you for your consideration of this request.

Sincerely:

J. Stanley Huckaby

J. Stanley Huckaby, Treasurer
Bush-Quayle '88

93040950737

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 8, 1992

J. Stanley Huckaby, Treasurer
Bush-Quayle '88
228 South Washington Street
Alexandria, Virginia 22314

RE: MUR 3385

Dear Mr. Huckaby:

This is in response to your letter dated November 18, 1992, which we received on November 20, 1992, requesting an extension of 20 days to respond to the notification letter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on December 15, 1992.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Lawrence D. Parrish
Attorney

OGC 7937

Bush 88 Quayle

HAND DELIVERY

December 17, 1992

92 DEC 17 PM 1:25

RECEIVED
FEDERAL ELECTION COMMISSION

93040950739

Mr. Lawrence D. Parrish
Office of the General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: Mur 3385

Dear Mr. Parrish:

Thank you for your time in meeting with us on this matter yesterday.

In light of the items discussed in the meeting, and in consideration of the approaching holidays, I am requesting an extension of twenty days in which to respond to MUR 3385, which would set a due date for the response of January 6, 1992. Thank you for your consideration of this request.

Sincerely:

J. Stanley Huckaby, Treasurer
Bush-Quayle '88

228 South Washington Street • Alexandria, Virginia 22314
Telephone 703-549-8692 • FAX 703-684-0683

Bush 88 Quayle

June 3, 1993

Ms. Lois G. Lerner
Associate General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

Dear Ms. Lerner:

Enclosed please find a signed Conciliation Agreement on behalf of Bush-Quayle '88 for MUR 3385, along with a check from the Bush-Quayle '92 Compliance Committee, Inc., in the amount of $10,000.

Thank you for your assistance in this matter.

Sincerely:

J. Stanley Huckaby, Treasurer
George Bush for President Committee, Inc., and
Bush-Quayle '88, Inc.



228 South Washington Street • Alexandria, Virginia 22314
Telephone 703-549-8692 • FAX 703-684-0683

RECEIVED
F.E.C.
SECRETARIAT
93 JUN 15 PM 2:57

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of )
) MUR 3385
Bush-Quayle 88 and )
J. Stanley Huckaby, )
as treasurer )

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement which has been signed by J. Stanley Huckaby the treasurer of Bush-Quayle 88. (Attachment 1).

The attached agreement contains no changes from the agreement approved by the Commission on July 28, 1992. The ten thousand dollars civil penalty check has been received. (Attachment 2).

II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with Bush-Quayle 88 and J. Stanley Huckaby, as treasurer.

2. Close the file.

3. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

6/15/93
Date

BY: [signature]
Lois G. Lerner
Associate General Counsel

Attachments
1. Conciliation Agreement
2. Copy of civil penalty check

Staff Assigned: Lawrence D. Parrish

9304095074 1

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | MUR 3385 |
| Bush-Quayle 88 and J. Stanley Huckaby, | ) | |
| as treasurer. | ) | |

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 3385:

1. Accept the conciliation agreement with Bush-Quayle 88 and J. Stanley Huckaby, as treasurer, as recommended in the General Counsel's Report dated June 15, 1993.

2. Close the file.

3. Approve the appropriate letter, as recommended in the General Counsel's Report dated June 15, 1993.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Potter recused himself from this matter.

Attest:

6-18-93
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

| | | |
|---|---|---|
| Received in the Secretariat: | Tues., June 15, 1993 | 2:57 P.M. |
| Circulated to the Commission: | Tues., June 15, 1993 | 4:00 P.M. |
| Deadline for vote: | Fri., June 18, 1993 | 4:00 P.M. |

FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

JUNE 30, 1993

J. Stanley Huckaby, Treasurer
Bush-Quayle 88
228 South Washington Street
Alexandria, VA 22314

RE: MUR 3385

Dear Mr. Huckaby:

On June 18, 1993, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on behalf of Bush-Quayle 88 and J. Stanley Huckaby, as treasurer, in settlement of a violation of 11 C.F.R. § 9004.6, a provision of the Commission's regulations. Accordingly, the file has been closed in this matter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Lawrence D. Parrish

Lawrence D. Parrish
Attorney

Enclosure
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

93 JUN -7 AM 11:33

RECEIVED
FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of<br><br>Bush-Quayle 88 and<br>J. Stanley Huckaby,<br>as treasurer | )<br>)<br>)<br>)<br>) | MUR: 3385 |

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Bush-Quayle 88 Committee and J. Stanley Huckaby, as treasurer ("Respondents") violated 11 C.F.R. § 9004.6.

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Bush-Quayle 88 Committee ("Committee") is the principal campaign committee for George Bush and Dan Quayle, Republican candidates for President and Vice-President of the

United States, for the 1988 general election campaign, within the meaning of 2 U.S.C. § 431(4).

2. J. Stanley Huckaby is the treasurer of the Committee.

3. Pursuant to 11 C.F.R. § 9004.6(a) and (b), if an authorized committee incurs expenditures for transportation, group services and facilities (including air travel, ground transportation, housing, meals, telephone service, typewriters) made available to media personnel, such expenditures will be considered qualified campaign expenses subject to the overall expenditure limitations of 11 C.F.R. § 9003.2(a)(1) and (b)(1). Furthermore, if reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each individual shall not exceed either the individual's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the individual's pro rata share of the actual cost of the transportation and services made available. An individual's pro rata share shall be calculated by dividing the total number of individuals to whom such transportation and services are made available into the total cost of the transportation and services. The total amount of reimbursements received from an individual under this section shall not exceed the actual pro rata cost of the transportation and services made available to that person by more than 10 percent.

4. From August 1988 through November 9, 1988, the Committee provided a plane for members of the Press to accompany

Air Force II. A separate aircraft was also used by Vice-President Quayle and his traveling party.

5. The Committee, when determining the pro rata cost for travel by members of the press, failed to properly calculate the amount due by the Press by understating the number of passengers on the aircraft used by the Committee, which resulted in the Press being overcharged a total amount of $133,818.63.

V. The Respondents failed to follow the prescribed method of calculating the actual cost of transportation and services made available to the media, in violation of 11 C.F.R. § 9004.6.

VI. 1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of ten thousand dollars ($10,000.00), pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. Respondents will make reimbursement payments to the media in the amount of $133,818.63.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirement contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

BY: ______________________ Date 6/29/93
Lois G. Lerner
Associate General Counsel

FOR THE RESPONDENTS:

Stan Huckaby, Treasurer ______ Date 6/3/93
(Name)
(Position)

92448

**BUSH - QUAYLE '92**
COMPLIANCE COMMITTEE
OPERATING ACCOUNT
P.O. BOX 18998
WASHINGTON, DC 20036

1720 EYE STREET N.W., WASHINGTON, DC 20006

15-154/540

June 3 19 93

PAY *********TEN THOUSAND AND NO/100********************* DOLLARS $10000.00

TO THE ORDER OF U. S. Treasurer
Washington, DC 20220

⑈092448⑈ ⑆054001547⑆ 20065749⑈12

BUSH-QUAYLE '92
COMPLIANCE COMMITTEE
OPERATING ACCOUNT

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW.
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.

DELUXE - FORM WVCP-3 V-2

| DATE | DESCRIPTION | AMOUNT |
|---|---|---|
| 6/3/93 | MUR 3385 | $ 10000.00 |

93 JUN -7 AM 11:3?

93040950748

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3385

DATE FILMED 7/26/93 CAMERA NO. 4

CAMERAMAN E.E.S.

93040950749

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

✓ Microfilm

____ Public Rcds

____ Press

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 3385.

9/8/93

9 3 0 4 0 9 5 4 6 2 8

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )
)
Bush-Quayle 88 and J. Stanley ) MUR 3385
Huckaby, as treasurer. )

**AMENDED CERTIFICATION**

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on June 18, 1993, the Commission decided by a vote of 5-0 to take the following actions in MUR 3385:

1. Accept the conciliation agreement with Bush-Quayle 88 and J. Stanley Huckaby, as treasurer, as recommended in the General Counsel's Report dated June 15, 1993.

2. Close the file.

3. Approve the appropriate letter, as recommended in the General Counsel's Report dated June 15, 1993.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Potter recused himself from this matter.

Attest:

9-3-93
Date

Delores Hardy
for Marjorie W. Emmons
Secretary of the Commission

| | | | |
|---|---|---|---|
| Received in the Secretariat: | Tues., | June 15, 1993 | 2:57 p.m. |
| Circulated to the Commission: | Tues., | June 15, 1993 | 4:00 p.m. |
| Deadline for vote: | Fri., | June 18, 1993 | 4:00 p.m. |

bjr